

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jennifer Smith	Team: Squad #7	CCRB Case #: 201810707	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/24/2018 3:02 AM	Location of Incident: 44th Precinct stationhouse	Precinct: 44	18 Mo. SOL 2/24/2020	EO SOL 2/24/2020	
Date/Time CV Reported Wed, 12/26/2018 4:25 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 12/26/2018 4:25 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Kenny Victoria	21225	960051	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Christopher Crain	01266	933719	044 PCT
2. POM Daniel Maria	22210	954096	044 PCT
3. POM Robert Cabrera	21253	959525	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Kenny Victoria	Abuse: Police Officer Kenny Victoria strip-searched § 87(2)(b) [REDACTED]	[REDACTED]

### Case Summary

On December 26, 2018, § 87(2)(b) called the CCRB and filed this complaint.

On August 24, 2018, at approximately 3:02 a.m., Police Officer Kenny Victoria, Sergeant Christopher Crain, Police Officer Daniel Maria, and Police Officer Robert Cabrera, Anti-Crime officers of the 44<sup>th</sup> Precinct, stopped § 87(2)(b) for drinking an open container of Guinness beer outside of § 87(2)(b) in the Bronx. § 87(2)(b) was transported to the stationhouse because he refused to identify himself to the officers. At the 44<sup>th</sup> Precinct stationhouse, PO Victoria strip-searched § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g)) recovering 30 bags of crack cocaine, cocaine, and marijuana. § 87(2)(b) was issued an § 87(2)(a) summons, and was charged with § 87(2)(b).

The body worn cameras of PO Victoria, Sgt. Crain, PO Maria, and PO Cabrera captured this incident but not the strip-search allegation.

### Findings and Recommendations

#### Allegation A – Abuse of Authority: Police Officer Kenny Victoria strip-searched § 87(2)(b)

It is undisputed that § 87(2)(b) was transported to the 44<sup>th</sup> Precinct stationhouse, after the officers stopped him for an open container, because he refused to provide the officers with his real name and identification.

§ 87(2)(b) (01 Board Review) said that PO Victoria, PO Maria, and Sgt. Crain lodged him in a holding cell, with a traditional cell door with open bars, amongst 15 other cells. A security camera faced the cell. PO Victoria entered § 87(2)(b)'s cell while PO Maria and Sgt. Crain stood outside of it. PO Victoria pulled § 87(2)(b)'s pants down while § 87(2)(b) was handcuffed. PO Victoria pulled the front elastic of § 87(2)(b)'s underwear away from § 87(2)(b)'s body and looked down into § 87(2)(b)'s groin area. PO Victoria groped § 87(2)(b)'s testicles over his underwear, reached into § 87(2)(b)'s underwear, and removed the bags of crack cocaine and marijuana that § 87(2)(b) had been storing there. Only then was § 87(2)(b) transported to a private room, where the officers asked him where they could find guns. § 87(2)(b) was transported to Central Booking, and was incarcerated until December 14, 2018.

PO Victoria (02 Board Review) said he frisked and searched § 87(2)(b) at the stationhouse and felt something hard near § 87(2)(b)'s testicles that he had not felt when he frisked him after the initial stop. When PO Victoria touched the hard area, the area moved as if it was not supposed to be there. Sgt. Crain granted PO Victoria approval to strip-search § 87(2)(b). PO Victoria and PO Maria escorted § 87(2)(b) into the holding cell to strip-search him, where PO Victoria always conducts his strip-searches. There is a security camera inside of the holding cell that § 87(2)(b) was lodged in. PO Victoria acknowledged pulling § 87(2)(b)'s pants down while he was handcuffed, and said he also pulled his underwear down, recovering the bags of crack cocaine and marijuana. During PO Victoria's CCRB interview, PO Victoria was asked whether he documented § 87(2)(b)'s strip-search. PO Victoria asked to see § 87(2)(b)'s arrest report that he filed (03 Board Review), and said that his strip-search should have been documented there. Upon seeing § 87(2)(b)'s arrest report, PO Victoria acknowledged writing "SILA" (search incident to lawful arrest) to indicate how the officers recovered § 87(2)(b)'s narcotics, and acknowledged that the strip-search was not documented. PO Victoria made the

following memo book entry regarding the search at 3:10 a.m., on August 24, 2018 (05 Board Review): “SILA controlled substance and marijuana found in defendant’s groin.”

The arrest report details, written by PO Victoria, note that § 87(2)(b) was observed with a 12-ounce open container of Guinness beer on a public sidewalk. Upon stopping § 87(2)(b) refused to give his name and identification, and he was placed under arrest. § 87(2)(b) During a search incident to lawful arrest, § 87(2)(b) was found in possession of a large quantity of a controlled substance. § 87(2)(b) s criminal court complaint (04 Board Review), signed by PO Victoria, notes that PO Victoria observed § 87(2)(b) to have a total of 30 bags of crack cocaine, crack, and marijuana in his underwear.

Sgt. Crain (06 Board Review) denied approving § 87(2)(b) s strip-search, and denied being aware that PO Victoria ever strip-searched § 87(2)(b) Sgt. Crain said he was at the main desk in the stationhouse while PO Victoria and PO Maria lodged § 87(2)(b) in the holding cells. After lodging § 87(2)(b) PO Victoria told Sgt. Crain that he felt something in § 87(2)(b) s pants, removed it, and determined it to be narcotics. PO Victoria did not say how he removed the narcotics. Neither PO Victoria nor PO Maria asked Sgt. Crain to approve a strip-search for § 87(2)(b) § 87(2)(b) Sgt. Crain made the following memo book entry regarding the incident at 3:02 a.m., on August 24, 2018 (07 Board Review): “1 under – initially stopped for open container of alcohol. Defendant failed and refused to give ID and or name. Handcuffed to verify ID. At desk, defendant stated he had open parole warrant. SILA large amount of narcotics recovered.”

PO Maria (08 Board Review) acknowledged that he and PO Victoria were the only officers to lodge § 87(2)(b) in the holding cell, that PO Victoria told him that he felt something unnatural on § 87(2)(b) s body, and that PO Victoria recovered narcotics from § 87(2)(b) s pants. However, PO Maria did not recall if he saw PO Victoria recover the narcotics. PO Maria never saw PO Victoria strip-search § 87(2)(b) and he did not know whether PO Victoria conducted a strip-search, or if he got approval for one. PO Maria never saw PO Victoria pull § 87(2)(b) s pants down. PO Victoria was alone with § 87(2)(b) in the holding cell at one point while PO Maria was either standing directly outside of the holding cell, or halfway down the hallway of the holding cell area, staring into oblivion. PO Maria said, “I couldn’t tell you what happened. It wasn’t my thing.” PO Maria made the following memo book entries regarding the incident at 3:18 a.m., on August 24, 2018 (09 Board Review): “Male stopped at corner of East 165<sup>th</sup> Street and Sherman Avenue. Open container (no ID). 1 under by PO Victoria. Assist lodging search with PO Victoria. Positive.”

PO Cabrera (10 Board Review) said he was only in the stationhouse for approximately two minutes after transporting § 87(2)(b) there, before resuming patrol with either PO Victoria or Sgt. Crain. PO Cabrera was not involved in lodging § 87(2)(b) in the holding cells, and he was never present for any strip-search of § 87(2)(b) PO Cabrera was never made aware of § 87(2)(b) § 87(2)(b) having been strip-searched. PO Cabrera’s only memo book entry regarding the incident was (11 Board Review): “92C (arrest) by PO Victoria.”

The Command Log makes no record of § 87(2)(b) s strip-search (15 Board Review).

NYPD Patrol Guide, Procedure 208-05 (12 Board Review) states that a strip-search is any search where an individual’s undergarments and/or private areas are exposed, or in which an individual’s clothing is removed, lifted, or pulled down to expose undergarments or private areas. A strip search of a prisoner may not be conducted routinely in connection with an arrest. Strip-searches may only be conducted with the knowledge and approval of the arresting officer’s immediate supervisor or the borough Court Section supervisor. The arresting officer requesting

authorization to conduct a strip-search must describe the factual basis for the request to the officer's immediate supervisor/borough Court Section supervisor. A supervisor will authorize a strip-search only when an arresting officer has articulated a reasonable suspicion that the individual is concealing evidence, contraband, or a weapon. The immediate supervisor of the arresting officer/borough Court Section supervisor, based on the facts presented, will determine if a strip-search should be conducted. The supervisor authorizing the strip-search is responsible for ensuring the search is conducted properly. A strip-search shall only be conducted in utmost privacy.

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first complaint to which § 87(2)(b) has been a party (13 Board Review).
- PO Victoria has been a member-of-service for three years and has been a subject in two CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)

#### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- As of March 18, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (14 Board Review).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 7

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date
Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date